

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-2219-99
RAVillageliu

date: April 22, 1999

to: District Director, Illinois District
Attn: E:PQM:A:90-DAY Section Coordinator V.Boyd

from: District Counsel, Illinois District

subject: AO: [REDACTED]
District Counsel, Illinois District Review of proposed 90-day SND
Taxpayer: [REDACTED]
Taxable Year Ended: December 31, [REDACTED].
Deficiency: \$[REDACTED]
Related case: [REDACTED]
Docket No. [REDACTED].

Non-Docketed Large Case Advice.¹

ISSUANCE OF 90-DAY LETTER APPROVED.

We have reviewed the proposed notice of deficiency for the above-indicated taxpayer and taxable year. We concur that it should be issued as proposed.

We note that your computation of the statute of limitations expiration date is [REDACTED]. We noted that initially someone computed the statute expiration date to be [REDACTED] (presumably because that is what the transcript of account appears to indicate and the return appears to be date stamped [REDACTED] by the Service in Philadelphia, Pennsylvania).² Subsequently, someone changed this date to [REDACTED], presumably, because that is the actual signature date shown on the taxpayer's Form 1120-FSC. Finally, someone else recomputed the expiration date to be [REDACTED]. We are also not sure what the rationale was for this second

¹A copy of this opinion and SND is being sent to the national office for coordination purposes.

²We found no explanation in the administrative file as to why the Service concluded that the stamped date of [REDACTED], which is also the date shown in the transcript of account is incorrect.

recomputation. Presumably, it is because the envelope in which the return came is post-meter marked [REDACTED]. To avoid any statute of limitations arguments in the Tax Court, assuming that the taxpayer will petition the proposed SND to the U.S. Tax Court, once it is issued, we strongly recommend that you be conservative in your approach and issue the notice of deficiency well before [REDACTED].

As to the substance of the proposed SND, we have the following observation. The only proposed positive Adjustment to Income in the SND is Item 1.a. FSC Commission Income \$[REDACTED]. This positive adjustment results from an offsetting negative adjustment in the docketed case [REDACTED].³ It has been docketed as U.S. Tax Court Docket No. [REDACTED]. The case was [REDACTED] petitioned to the U.S. Tax Court and it has been assigned to the undersigned to answer.

The administrative file for the instant proposed SND to The FSC did not contain sufficient information for a reviewer to realize that we have offsetting adjustments. Fortunately, the case was assigned to the undersigned who serves as the advisor to the Examination Team, otherwise we may have missed this crucial fact. We obtained verifying documentation from the Team Coordinator and this information is now included in the administrative file. Additionally, we also included had the Team Coordinator prepare a reconciliation of the FSC adjustment to the to the adjustment involved in the [REDACTED]'s 90-day letter, as the numbers are not identical due to the fact that the taxpayer reported the amounts inconsistently in the FSC and the consolidated group returns.

As we have already mentioned, the related case of [REDACTED] [REDACTED] Docket No. [REDACTED] in the U.S. Tax Court, was recently docketed and is pending answer in this office. We have not received the administrative file to be able to answer the case yet. We would appreciate anything that you can do to ensure that we do receive that file as soon as possible. We assume that the administrative file must be in ESP. We are enclosing a copy of the petition in Docket No. [REDACTED] in

³Presumably, the taxpayer will agree to these two offsetting adjustments at some point because it is to the overall advantage of the [REDACTED] group of corporations to increase expenses in the fully taxable consolidated return group at the cost of increasing income in the favorably taxed FSC. The taxpayer can not logically whipsaw us as long as the Service is smart enough to keep the two cases (the FSC and the consolidated group case) together.

case you need to show that to ESP before they can release the administrative file.

If you have any questions, please contact the undersigned at (312) 886-9225, extension 308.

RICHARD A. WITKOWSKI
District Counsel

By: *Rogelio A. Villageliu*
ROGELIO A. VILLAGELIU
Special Litigation Assistant

Attachments:

The Administrative file, which contains [REDACTED], original Form 1120-FSC, U.S. Income Tax Return of Foreign Sales Corporation, for the taxable year [REDACTED] the envelope the return used to mail the return with a postmeter date of [REDACTED]; the proposed SND; the transcript of account; the Form 4549-A, Income Tax Examination Changes with attached Form 886-A, Explanation of Items, in very summary form, and the International Examiner's Report, also in a very summary form; and, our additions to it, such as the Team Coordinator's reconciliation of adjustments to FSC and consolidated return group for FSC Commission Income, and his explanation of the adjustments.

CC:District Counsel, Illinois District

CC:Assistant Regional Counsel, Midstates (Large Case), (Chicago)
(with copy of proposed SND)

CC:Assistant Regional Counsel, Midstates (TL)
(with copy of proposed SND)

CC:DOM:FS (2 copies with copy of proposed SND)